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Governor
State of Missouri

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DIVISION OF PROFESSIONAL REGISTRATION

Department of Insurance
Financial Institutions
and Professional Registration
Chloria Lindley-Myers, Director

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Jefferson City, MO 65102-1339
E-Mail: realestate@pr.mo.gov
<http://pr.mo.gov/realestate.asp>

June 13, 2013

Terry W. Moore
Executive Director

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KIP P. SMITH
17115 PEMBROOK
CARTHAGE MO 64836

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
No. 9414 7266 9904 2037 3850 56

NATHANIEL DAVID DALLY
349 S MAIN
PO BOX 763
CARTHAGE MO 64836

No. 9414 7266 9904 2037 3850 70

RE: Missouri Real Estate Commission vs. Kip P Smith (#2011014022) and Smith Midwest LLC (#2011014021).

Dear Mr. Smith,

Please find enclosed a copy of the Settlement Agreement between Missouri Real Estate Commission and Kip P. Smith in the above referenced case.

Sincerely,

A handwritten signature in cursive script, reading "Terry W. Moore", followed by a horizontal line.

Terry W. Moore
Executive Director

TWM/cns

Enclosure

C: Kip P Smith (regular mail)
Nathaniel David Dally, Atty. (regular mail)

RECEIVED

JUN 13 2018

MREC

SETTLEMENT AGREEMENT BETWEEN
MISSOURI REAL ESTATE COMMISSION AND KIP P. SMITH

RECEIVED

JUN 13 2018

Div. of Professional Registration

Come now Kip P. Smith ("Licensee" and/or "Smith"), and the Missouri Real Estate Commission ("Commission") and enter into this settlement agreement for the purpose of resolving the question of whether Smith's license as a real estate broker associate will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Commission under § 621.110, RSMo.

Licensee acknowledges that Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the Commission at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's license. Being aware of these rights provided them by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enter into this settlement agreement and agrees to abide by the terms of this document, as they pertain to Licensee.

Licensee acknowledges that Licensee has received a copy of the documents relied upon by the Commission in determining there was cause to discipline Licensee's license, along with citations to law and/or regulations the Commission believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Commission that Licensee's license, numbered 2011014022, is subject to disciplinary action by the Commission in accordance with the provisions of Chapter 621 and §§ 339.010-339.205 and 339.710-339.855, RSMo.

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

Joint Stipulation of Fact and Conclusions of Law

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo.

2. Licensee, Kip P. Smith, holds a real estate broker associate license from the Commission, license number 2011014022. The Commission issued Smith's license on May 19, 2011. Smith's license expires June 30, 2018. Smith's license was current and active at relevant times described below. Licensee Kip P. Smith is the designated broker for Smith Midwest, LLC.

3. Smith Midwest, LLC, holds a real estate association license from the Commission, license number 2011014021. The Commission issued Smith Midwest, LLC's license on May 19, 2011. Smith Midwest LLC's license expires June 30, 2018. Smith Midwest, LLC's license was current and active at relevant times described below.

4. The Commission initiated an investigation into the business Licensee Smith conducted on behalf of Smith Midwest, LLC during a period of time in which Smith's license was suspended pursuant to Section 324.042, RSMo.

5. On or about January 27, 2017, Licensee Smith was advised by letter that the Commission had been notified by the Missouri Department of Revenue that Licensee Smith has a tax issue.

6. On or about April 26, 2017, the Commission sent via certified and regular mail a letter advising Licensee Smith that his license had been suspended and that he needed to change designated brokers or close his company until Licensee Smith could get his tax issue resolved and his license reinstated.

7. On or about May 16, 2017, the April 26, 2017 certified mail piece was returned as unclaimed.

8. On or about June 2, 2017, the Commission sent a letter to Licensee Smith advising Smith that the Commission had not received a change in designated broker form or a closing form.

9. On or about July 19, 2017, the Missouri Real Estate Commission office received an email from Licensee Smith inquiring as to what documents were needed to have his license reinstated.

10. On or about July 20, 2017, the Missouri Real Estate Commission office sent an email to Licensee Smith instructing Smith as to what he needed to do to get his license and his company's license reinstated.

11. On or about July 25, 2017, a closing form with all licenses and reinstatement applications were received by the Missouri Real Estate Commission office from Licensee Smith. Licensee Smith, in his activity statement letter indicated he "unwittingly" conducted business as usual between April 26, 2017 and July 1, 2017, claiming he was unaware of his licensure suspension.

12. Licensee continued to practice as a real estate broker associate and as the designated broker for Smith Midwest, LLC, during a time which his license, number 2011014022, was under suspension pursuant to section 324.010, RSMo.

13. Licensee's conduct, as described in paragraphs 5 and 12 above, providing real estate services without a valid license, constitutes cause to discipline Licensee's license.

14. Section 339.020, RSMo states: It shall be unlawful for any person, partnership, limited partnership, limited liability company, association, professional corporation, or corporation, foreign or domestic, to act as a real estate broker, real estate broker-salesperson, or real estate salesperson or to advertise or assume to act as such without a license first procured from the commission.

15. Section 324.042, RSMo, provides: All governmental entities issuing professional licenses, certificates, registrations, or permits pursuant to sections 209.319 to 209.339, sections 214.270 to 214.516, sections 256.010 to 256.453, section 375.014, sections 436.005 to 436.071, and chapter 317 and chapters 324 to 346 shall provide the director of revenue with the name and Social Security number of each applicant for licensure with or licensee of such entities within one month of the date the application is filed or at least one month prior to the anticipated renewal of a licensee's license. If such licensee is delinquent on any state taxes or has failed to file state income tax returns in the last three years, the director shall then send notice to each such entity and licensee. In the case of such delinquency or failure to file, the licensee's license shall be suspended within ninety days after notice of such delinquency or failure to file, unless the director of revenue verifies that such delinquency or failure has been remedied or arrangements have been made to achieve such remedy. The director of revenue shall, within ten business days of notification to the governmental entity issuing the professional license that the delinquency has been remedied or arrangements have been made to remedy such

delinquency, send written notification to the licensee that the delinquency has been remedied. Tax liability paid in protest or reasonably founded disputes with such liability shall be considered paid for the purposes of this section.

16. Cause exists for the Commission to take disciplinary action against Licensee's license under § 339.100.2(15), (19) and (23), RSMo, which states in pertinent part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

...

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860*, or any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860*;

...

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

...

(23) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated under sections 339.010 to 339.180 and section 339.710 to 339.860* who is not registered and currently eligible to practice under sections 339.010 to 339.180 and sections 339.710 to 339.860*[.]

Joint Agreed Disciplinary Order

16. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Commission in this matter under the authority of §§ 536.060, 621.045.4 and 621.110, RSMo.

17. The terms of discipline shall include that **Smith's real estate broker associate license is hereby placed on PROBATION for a period of TWO (2) YEARS from the effective date of this Order.** During the period of probation on Smith's real estate broker associate license, Smith shall be entitled to practice as a real estate broker associate provided Smith adheres to all the terms stated herein. The period of probation shall constitute the "disciplinary period."

Licensee Smith shall pay a civil penalty in the amount of \$2,500.00 pursuant to § 339.100.3,

RSMo. The civil penalty shall be made by certified check payable to the "Missouri Real Estate Commission" and mailed to the Missouri Real Estate Commission, PO Box 1339, Jefferson City, MO 65102-1339. Said check must be postmarked or hand delivered within 60 days of the effective date of this Settlement Agreement. Funds received pursuant to this Order shall be handled in accordance with Section 7 of Article IX of the Missouri Constitution and Section 339.205.8, RSMo. Licensee Smith's failure to pay the full amount of the \$2,500 in civil penalties within sixty days of the effective date of this Order shall constitute a violation of this Order.

18. This Agreement does not bind the Commission or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Agreement that are either now known to the Commission or may be discovered.

19. This Agreement does not bind the Commission or restrict the remedies available to it concerning any future violations by Licensees of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms of this Agreement.

20. All parties agree to pay all their own fees and expenses incurred as a result of this case, its settlement or any litigation.

21. The parties to this Agreement understand that the Missouri Real Estate Commission will maintain this Agreement as an open record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

22. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

23. Licensee, together with Licensee's heirs and assigns, and Licensee's attorneys, do hereby waive, release, acquit and forever discharge the Commission, its respective members and any of its employees, agents, or attorneys, including any former Commission members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters

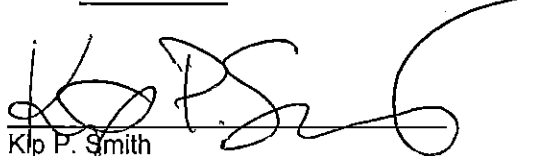
raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

24. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of Licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to:

Administrative Hearing Commission, United States Post Office Building, 131 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102-1557.

25. If Licensee has requested review, Licensee and Commission jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the Commission may proceed to seek discipline against Licensee as allowed by law. If Licensee does not submit the agreement to the Administrative Hearing Commission for determination, the agreement shall become effective fifteen (15) days following the signature of the Commission's Executive Director.

LICENSEES


Kip P. Smith

COMMISSION


Terry W. Moore
Executive Director
Missouri Real Estate Commission

Date 6/5/2018

Date 06-13-18